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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/082,772

02/25/2002

Peter Droge

DEBE:008US

4391

7590 02/27/2007
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EXAMINER

NGUYEN, QUANG

ART UNIT

PAPER NUMBER

1633

MAIL DATE

DELIVERY MODE

02/27/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/082,772	Applicant(s) DROGE ET AL.	
	Examiner Quang Nguyen, Ph.D.	Art Unit 1633	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 14 February 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 29,30,32-39,43-51 and 58.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

Continuation of 3. NOTE: The scope of the proposed claims is not the same as that of finally rejected claims, which would require further consideration and search given the newly recited limitation "a first DNA segment stably integrated into the genome of said cell".

Continuation of 11. does NOT place the application in condition for allowance because: Applicant's arguments are respectfully not found persuasive for overcoming the prior art of record. It is noted that Applicants presented the same arguments as those in the amendment filed on 10/4/06, and these arguments have been addressed in details in the Final office action mailed on 12/14/06. With respect to any argument related to the proposed claims, it is moot because the proposed claims were not entered. With respect to the data of Lange-Gustafson et al., Applicants argue that the studies were performed in vitro and reflect conditions (25 C and KCl at 25 mM) that have nothing to do with the environment inside a living eukaryotic cell. Lange-Gustafson taught clearly that Int-h uses supercoiled DNA more effectively than non-supercoiled DNA as a substrate for recombination, and that in the absence of IHF, Int-h recombinates supercoiled and nonsupercoiled substrates identically (see abstract) at least in vitro. There is no factual evidence that Int-h would not be able to use supercoiled DNA at all under physiological conditions or inside a eukaryotic cell; and Applicants do not provide any factual evidence to support Applicants' argument. Furthermore, as already noted in the Final office action since wild-type lambda integrases are capable of mediating sequence specific recombination events in both eukaryotic and prokaryotic cells, and it is known that the conditions required by a wild-type lambda integrase to mediate a sequence specific recombination event in prokaryotic cells, under physiological conditions and in vitro conditions are even more stringent than those required by the Int-h (see the teachings of Hartley et al., Christ & Droge and Lange-Gustafson), it is therefore reasonable for an ordinary skilled artisan to expect that at least Int-h is also able to function in eukaryotic cells to mediate sequence specific recombination of both eukaryotic and/or prokaryotic DNA segments.


QUANG NGUYEN, PH.D.
PRIMARY EXAMINER